

No. _____

05-601 NOV 9 - 2005

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In The

Supreme Court of the United States

BUTLER COUNTY FAMILY YMCA,

Petitioner,

VS.

CHERIE HUGH,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

PETITION FOR WRIT OF CERTIORARI

Attorneys for Petitioner:

ADAM M. BARNES, ESQUIRE
(*Counsel of Record*)
TRISHA A. ZAKEN, ESQUIRE

WALSH, COLLIS & BLACKMER, L.L.C.
Gulf Tower, 707 Grant Street,
14th Floor
Pittsburgh, PA 15219
412-258-2255

QUESTIONS PRESENTED

- I. Whether the Third Circuit Court of Appeals has erred in holding that an employee proceeding under a Title VII gender discrimination suit need not prove she was objectively qualified for the position from which she was terminated when the employer had promoted the employee to that position?
- II. Whether various Circuit Courts have inconsistently evaluated an employee's showing of objective qualifications in Title VII claims such that exercise of this Honorable Court's supervisory power is necessary?

CORPORATE DISCLOSURE STATEMENT

Petitioner, Butler County Family YMCA, has no parent corporations or publicly held companies owning 10% or more of their stock.

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CITATION OF REPORTS OF OPINIONS ENTERED IN THE CASE

Hugh v. Butler County Family YMCA, 418 F.3d 265 (3d Cir. 2005). The District Court did not publish an opinion in this case. Its opinion is reprinted in the Appendix at App. 11.

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Third Circuit entered its judgment on August 12, 2005. See Appendix 1. Petitioner, Butler County Family YMCA, seeks review of that judgment on a Writ of Certiorari. The present Petition is timely filed under 28 U.S.C. § 2101 and under Rule 13.1 of this Court.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) to review on a Writ of Certiorari the judgment of a federal Court of Appeals.

STATUTORY PROVISIONS INVOLVED

Title VII provides in relevant part:

42 U.S.C.A. § 2000e-2

(a) Employer practices

It shall be an unlawful employment practice for an employer –

- (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment,

because of such individual's race, color, religion, sex, or national origin; or

- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

This is a Title VII gender discrimination suit filed by Cherie Hugh. In January of 1998 Ms. Hugh was hired by the Butler County Family YMCA as a volunteer recruiter for its Big Brothers/Big Sisters Program. She held that position until approximately June of 1999 when she became the volunteer coordinator for the Big Brothers/Big Sisters Program. In both positions, she was a volunteer. In May of 2000, Ms. Hugh was promoted to the Director of the Big Brothers/Big Sisters Program. She was promoted because the Butler County Family YMCA recognized her loyalty to the program and wanted to give her the opportunity to serve as its Director. The objective requirements for the position of Director of Big Brothers/Big Sisters Program included a social work degree and one (1) year experience as a caseworker. Ms. Hugh admittedly did not possess these objective job qualifications.

Prior to promoting Ms. Hugh to the Director of Big Brothers/Big Sisters Programs, there was a concern about her ability to effectively lead its advisory counsel which

was also a requirement of this position. During the one (1) year period wherein Ms. Hugh served as the Program's Director, she failed to fulfill the required responsibilities. In April of 2001, she was terminated from her position as the Director of the Big Brothers/Big Sisters Program.

Ms. Hugh subsequently filed suit alleging that her termination was in violation of Title VII of the Civil Rights Act, codified at 42 U.S.C. § 2000(e) *et seq.*, as well as the Pennsylvania Human Relations Act, codified at 43 Pa. C.S.A. § 951 *et seq.* After discovery closed, Butler County Family YMCA filed a Motion for Summary Judgment in the United States District Court for the Western District of Pennsylvania. Butler County Family YMCA averred that Ms. Hugh failed to establish a *prima facie* case as required under Title VII since she admittedly did not possess the objective job qualifications for the position of Director. The District Court granted this Motion for Summary Judgment and Ms. Hugh appealed.

On appeal, the United States Court of Appeals for the Third Circuit reversed the District Court's decision and remanded this case for further proceedings. In its holding, the United States Court of Appeals for the Third Circuit held that when the Butler County Family YMCA promoted Cherie Hugh from a volunteer position to the Director of the Big Brothers/Big Sisters position, Ms. Hugh was automatically deemed objectively qualified for the Director position. Specifically, the Court of Appeals has held that satisfactory performance of duties, subsequently leading to a promotion to a different position, establishes the employee's objective qualifications for the promoted to position. This holding not only eviscerates the long standing requirements of a *prima facie* case set forth under Title VII, but creates a disincentive for employers to promote its

employees from within. Given the important legal and social ramifications of the Court of Appeals' decision, exercise of this Court's supervisory power is necessary.

REASONS FOR GRANTING THE WRIT

- I. This Court should exercise its supervisory power to resolve the important issue of whether or not a promoted employee must establish her objective qualifications for the promoted position when proceeding under a discrimination suit under Title VII.
 - II. This Court should exercise its supervisory power to resolve the inconsistent standards utilized by courts to determine if an employee has established her objective qualifications for the position in order to establish a *prima facie* case of discrimination.
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ARGUMENT

- I. **THE COURT OF APPEALS ERRED IN HOLDING THAT SATISFACTORY PERFORMANCE OF DUTIES, SUBSEQUENTLY LEADING TO A PROMOTION TO A HIGHER POSITION, ESTABLISHES A TITLE VII PLAINTIFF'S OBJECTIVE QUALIFICATIONS FOR THE HIGHER POSITION.**

The United States Supreme Court should overrule the Court of Appeals' precedential holding that satisfactory performance of duties, subsequently leading to a promotion to a different position, establishes a Title VII plaintiff's objective qualifications for a position. This new holding significantly departs from the *McDonnell Douglas* framework that has been utilized for the past 33 years.

This new holding also leads to a significant adverse impact on employers and employees alike that, in essence, does not encourage promotion from within.

This Court set forth elements that a Title VII plaintiff must establish. These are:

1. The plaintiff belongs to a minority;
2. that the plaintiff applied for **and was qualified** for the position;
3. that despite the qualifications, that she suffered adverse employment action; and,
4. after the adverse employment action, the position remained open and the employer continued to seek applicants from persons of plaintiff's qualifications.

See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). Instantly, the Court of Appeals has essentially held that an employee who is promoted from within to a higher position is automatically deemed qualified for that position. It appears that the basis for the Court of Appeals' decision is that an employee who works for a long period of time for an employer is "deemed qualified" by virtue of time spent working in a certain position. The problem with this holding is that it overlooks that employees are typically promoted to more difficult positions that require more responsibility, insight and skill. While that employee may have been qualified for the lower position by virtue of the time spent in the lower position, it does not follow that the employee is automatically qualified for the higher, more complex position.

The Court of Appeals' holding will have an adverse effect on employers and employees alike. Employers will

be more reluctant to promote from within to give their employees the opportunity and incentive to climb up the corporate ladder. Why would an employer promote an employee and give that employee a chance to succeed at a higher position if courts subsequently deem that employee objectively qualified simply because she was promoted to that position? When an employee readily admits that she does not possess the known objective job qualifications for a position, the courts can not step in and deem her objectively qualified based upon other criteria.

Likewise, when an employee readily admits that he or she does not possess the objective job qualifications for a position from which she is discharged, she does not establish a prima facie case sufficient to proceed with her discrimination claims under Title VII. To hold otherwise would erode the 33-year test implemented by *McDonnell Douglas, supra*, and followed by the courts.

The Court of Appeals decision is clearly in conflict with this Honorable Court's longstanding test outlined in *McDonnell Douglas*. Moreover, the Court of Appeals' holding has a significant adverse impact on employers and employees in that it discourages promotion of employees based upon loyalty and years of service.

II. THERE ARE INCONSISTENCIES AMONG THE CIRCUITS WHEN DETERMINING WHETHER AN EMPLOYEE HAS ESTABLISHED HER OBJECTIVE QUALIFICATIONS IN TITLE VII CASES.

Subsequent to the *McDonnell Douglas* holding, various courts have visited the issue of determining an employee's objective qualifications for purposes of establishing a prima

facia case. The **First Circuit** has held that a plaintiff claiming discriminatory termination needs to show that he or she was "qualified" in the sense that she was doing the job well enough to rule out the possibility that he or she was fired for inadequate job performance. See *Loeb v. Textron, Inc.*, 600 F.2d 1003 (1st Cir. 1979). The **Second Circuit** has held that a plaintiff must show that he or she possesses the basic eligibility and not that she was satisfactorily performing her duties. See *Slattery v. Swiss Reinsurance American Corp.*, 248 F.3d 87 (2d Cir. 2001).

The **Third Circuit** has now held that a plaintiff's qualifications are determined by an objective standard and that satisfactory performance of duties over a long period of time that lead to a promotion clearly establish "objective" qualifications to the promoted position. See *Jalil v. Advel Corp.*, 873 F.2d 701 (3d Cir. 1989), *cert. denied*, 493 U.S. 1023 (1990); *Sempier v. Johnson & Higgins*, 45 F.3d 724 (3d Cir.), *cert. denied*, 515 U.S. 1159 (1995); *Hugh v. Butler County Family YMCA*, 418 F.3d 265 (3d Cir. 2005).

The **Fifth Circuit** has held that a plaintiff must show that she possessed the necessary qualifications for the job at the time of the adverse action. See *Bienkowski v. American Airlines, Inc.*, 851 F.2d 1503 (5th Cir. 1988). The Fifth Circuit has also held that in failure to hire cases, an employer may establish objective requirements and rely upon them in arguing that a prima facie case is not established because the employee is not qualified. See *Johnson v. Louisiana*, 351 F.3d 616 (5th Cir. 2003).

There is somewhat of a dichotomy in the **Sixth Circuit**. There, the courts have held that for a plaintiff to prove that she is qualified under the second prong of the prima facie case, she must prove that she was performing